

## **EXHIBIT B**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MYRICK TANTIADO, an individual,) )  
Plaintiff, ) )  
vs. ) )  
POWER MEDICAL INTERVENTIONS, a ) )  
Pennsylvania corporation, and ) )  
DOES ONE through FIFTY, ) )  
inclusive, ) )  
Defendants. ) )

**CERTIFIED  
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No. C 07-02874 CRB MED

DEPOSITION OF  
ROBERT CHASE

Monday, December 17, 2007

REPORTED BY: TINA MARIE VELASQUEZ  
C.S.R. NO. 10072

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1 BE IT REMEMBERED that pursuant to Notice of  
2 Taking Deposition, and on Monday, December 17, 2007,  
3 commencing at the hour of 10:00 a.m., thereof, at the Law  
4 Offices of Mosley & Gearinger, 825 Van Ness Avenue, 4th  
5 Floor, San Francisco, California 94109, before me, TINA  
6 MARIE VELASQUEZ, a Certified Shorthand Reporter in and for  
7 the State of California, personally appeared

8 ROBERT CHASE,  
9 called as a witness by the Plaintiff, who, being by me  
10 first duly sworn, was thereupon examined and testified as  
11 is hereinafter set forth.

12 ---oOo---

13  
14 APPEARANCES:

15 Law Offices of MOSLEY & GEARINGER, LLP, 825 Van  
16 Ness Avenue, 4th Floor, San Francisco, California  
17 94109-7837, represented by STEPHEN HENRY, Attorney at Law,  
18 appeared as counsel on behalf of the Plaintiff.

19 Law Offices of BARTKO, ZENKEL, TARRANT & MILLER,  
20 900 Front Street, Suite 300, San Francisco, California  
21 94111, represented by ALYSON L. HUBER, Attorney at Law,  
22 appeared as counsel on behalf of the Defendant.

23  
24 Also present: MYRICK TANTIADO

25 ---000---

1 concern for selling some of the products.

2 Q. And do you recall which products he was showing  
3 concern about selling?

4 A. I seem to recall it was the circular stapler  
5 products.

6 Q. And what concerns did he convey to you?

7 A. I think he felt a lack of confidence in the  
8 product to be able to go and -- you know, he didn't have a  
9 comfort level in selling the product because he didn't feel  
10 like it would perform 100 percent of the time.

11 Q. And how did he explain that lack of performance?

12 A. I don't recall an explanation of a lack of  
13 performance, other than more of a lack of confidence in  
14 knowing that the product was going to work 100 percent of  
15 the time.

16 Q. Have you and Mr. Tantiado talked about this lack  
17 of confidence in the performance of the circular stapler  
18 prior to this meeting?

19 MS. HUBER: Objection; misstates his testimony.

20 THE WITNESS: I don't recall a specific  
21 conversation prior to that. I think that the -- you know,  
22 other conversations that we had previously would have been  
23 around difficulties around just getting the products -- the  
24 normal selling process of getting the products into the  
25 hospital.

1 MR. HENRY: Q. This conversation that you had  
2 at the meeting of the Society of Bariatrics Surgery, what  
3 else do you recall of the conversation?

4 A. I recall talking about the need to meet certain  
5 minimum amount of sales on a monthly basis with all of the  
6 products that we represented for Power Medical.

7 Q. And what did Mr. Tantiado say to that?

8 A. I think that he was in agreement that we had to  
9 sell a certain -- we had to continue to produce and sell a  
10 certain amount for the company even though there was -- in  
11 terms of total sales.

12 Q. When you say, "total sales," what are you  
13 referring to?

14 A. All of the product categories.

15 Q. Did Mr. Tantiado convey to you that he was unable  
16 to sell the circular stapler?

17 A. I don't recall him saying "unable," but I recall  
18 him saying that he was uncomfortable in selling that  
19 product.

20 Q. And why did he say he was uncomfortable selling  
21 the circular stapler?

22 A. Because he felt that -- he didn't have confidence  
23 that it would work 100 percent of the time.

24 Q. And how did you respond to that comment?

25 A. I believe that I said, "I understand your concern

1 and yet what we still need to do is meet a certain minimum  
2 sales for the company. Even if you're uncomfortable with  
3 that product, then focus on the other products," I seem to  
4 recall.

5 Q. Did you convey to Mr. Tantiado any opinion  
6 regarding how the company's management would react to his  
7 comments?

8 A. No.

9 Q. Did you tell him that that's not what they wanted  
10 to hear?

11 MS. HUBER: Objection; leading.

12 THE WITNESS: No.

13 MR. HENRY: Q. Do you recall anything else  
14 about the conversation that you had with Mr. Tantiado at  
15 the meeting of the Society of Bariatric Surgery?

16 A. It was -- as I recall, the conversation was, you  
17 know, we need to meet the minimum sales for the  
18 territories; so that if he didn't focus on those products,  
19 that he needed to focus on others. It really wasn't my  
20 concern where those sales came from, as long as we met kind  
21 of a minimum amount of sales.

22 Q. Prior to this time, had any other -- did you  
23 oversee any other salespeople besides Mr. Tantiado?

24 A. Yes.

25 Q. How many at that time, 2006?

1 you that a Power Medical product had harmed a patient?

2 A. None. None that come to mind, no.

3 Q. Do you have any recollection of discussing the  
4 potential harm to patients by Power Medical products during  
5 your conversation with Mr. Tantiado at the meeting of the  
6 Society of Bariatric Surgeons?

7 A. No, no.

8 Q. After you have your meeting with Mr. Tantiado at  
9 the Meeting of the Society of Bariatric Surgeons in 2006,  
10 did you convey anything that he told you to anyone at Power  
11 Medical?

12 A. No.

13 Q. Who was your direct supervisor?

14 A. During which timeframe?

15 Q. 2006.

16 A. I think that there could have been a couple  
17 different people during that year. Actually, a few  
18 different people. I believe the year started with Keith  
19 Mintun, and then it went to John -- I don't have his last  
20 name, but you probably have record of him. He was the VP  
21 of sales. And then eventually it was Steve Mehl.

22 Q. Do you recall who your direct supervisor was at  
23 the time that you met with Mr. Tantiado at the meeting of  
24 the Society of Bariatric Surgeons?

25 A. I believe that the gentleman that had -- John --

1 his last name is escaping me.

2 Q. Roche?

3 A. John Roche, yes. John Roche had left or been  
4 terminated, I believe, at that time. And there was no vice  
5 president of sales in place.

6 Q. Who were you reporting to?

7 A. So that -- and I'm not sure of the timing on  
8 that, whether John was still there at that meeting or not.  
9 But shortly thereafter or around that time, he was  
10 replaced, and they didn't have anybody -- actually, he  
11 wasn't replaced. They didn't have anybody to replace him  
12 just yet. And so Pat Holmes and Mike Whitman were kind of  
13 overseeing the sales organization.

14 Q. What was Pat Holmes' title?

15 A. I believe he was -- I don't recall the exact  
16 title, but I think he acted as kind of a director of  
17 operations or something like that.

18 Q. After your conversation with Mr. Tantiado at the  
19 Meeting at the Society of Bariatric Surgeons, did you  
20 discuss that meeting with Mr. Holmes or Mr. Whitman?

21 A. No.

22 Q. After that meeting with Mr. Tantiado at the  
23 Meeting of the Society of Bariatric Surgeons, did you  
24 discuss Mr. Tantiado in any way with Mr. Holmes or  
25 Mr. Whitman?



1           A.     There was a manager's meeting that took place in  
2 summer of 2006. I don't recall the exact date, but there  
3 was -- as part of the manager's meeting, there was a review  
4 of each region and then each sales representative within  
5 the region.

6           Q.     And who participated in that review?

7           A.     That was myself, Pat Holmes and Mike Whitman.

8           Q.     Were there other regional managers present?

9           A.     Yes.

10          Q.     Who were the other regional managers?

11          A.     Maurice -- there were other regional managers  
12 that attended the meeting. Maurice Pritchard, Steve Mehl,  
13 Keith Mintun was there, and then there was managers from  
14 the eastern region as well.

15          Q.     And did each regional manager have individual  
16 meetings with Mr. Holmes and Mr. Whitman?

17          A.     Yes.

18          Q.     And what did you do in your meeting with  
19 Mr. Holmes and Mr. Whitman at this manager's meeting in the  
20 summer of 2006?

21          A.     I reviewed the -- kind of the state of the region  
22 in terms of what the state of the business was basically;  
23 we had discussions around that.

24          Q.     Anything else?

25          A.     We did kind of a review by territory, by

1 personnel.

2 Q. Anything else?

3 A. No. I think that was it.

4 Q. Was there any discussion of product performance  
5 issues?

6 A. No.

7 Q. Any discussion of product performance failures?

8 A. No.

9 Q. Any discussion of difficulty in selling certain  
10 products?

11 A. No.

12 Q. Any discussion regarding difficulties related to  
13 the sale of the circular stapler?

14 A. Not that I recall.

15 Q. Was Mr. Tantiado discussed?

16 A. Yes.

17 Q. What was said about Mr. Tantiado?

18 A. I think that they wanted to know kind of what his  
19 -- you know, how he was doing, given the changes that had  
20 took place during the first quarter of the year, moving  
21 from sales representative to manager to sales  
22 representative.

23 Q. What did you say?

24 A. At the time, I recall letting them know that I  
25 thought that Myrick wasn't -- I didn't think that maybe he

1 was fully engaged in selling the products, selling all of  
2 the products.

3 Q. How did you describe that?

4 A. How did I describe that?

5 Q. What did you say about his not being fully  
6 engaged in selling all of the products?

7 A. I believe that that's how I communicated it. I  
8 don't know if those were the exact words, but that's --  
9 that that was -- that I felt like there was opportunities  
10 there to do more from a sales perspective than -- you know,  
11 and engage more than what he was currently exhibiting or  
12 doing.

13 Q. Did you discuss with Mr. Holmes and Mr. Whitman  
14 Mr. Tantiado's reluctance to sell certain product lines?

15 A. No.

16 Q. Why not?

17 A. Well, that didn't come to -- it wasn't -- it  
18 didn't come to the forefront of my mind at those  
19 discussions. I felt that there was opportunity to perform  
20 and meet kind of the overall sales that were required,  
21 regardless of whether he wanted to sell the circular  
22 stapler or not, but there was enough opportunity in the  
23 territory. So I didn't see that as being a detriment to  
24 him meeting his sales objectives.

25 Q. And did you discuss that with Mr. Holmes and

1 Mr. Whitman?

2 A. No.

3 Q. Did you and Mr. Holmes and Mr. Whitman go through  
4 each product line as you discussed Mr. Tantiado's sales?

5 A. No.

6 Q. What did Mr. Holmes and/or Mr. Whitman ask you  
7 about Mr. Tantiado?

8 A. I think the question that came up was, you know,  
9 "How is he doing? What's his state of mind now with all  
10 these changes? What's going on with him?"

11 Q. And how --

12 A. And those are probably not his exact words, but  
13 that's what I recall as being kind of the general  
14 discussion.

15 Q. And who was asking that?

16 A. I believe that was Mike Whitman.

17 Q. And what was your response?

18 A. My response was, I didn't feel like -- that  
19 Myrick was engaged in the job, that he had -- didn't show  
20 the desire that he once had in terms of going out and  
21 getting the sales.

22 Q. And did you seek to explain that in any way?

23 A. I don't think it took much more than that, that  
24 level of explanation. Mr. Whitman's kind of a -- doesn't  
25 need a lot of -- he's kind of a -- doesn't need a lot of

1 explanation. I don't think he needed more than what I had  
2 given him, what I expressed to you here.

3 Q. So what did Mr. Whitman say after you gave that  
4 explanation?

5 A. He said that -- both came to the conclusion that  
6 we needed to let Myrick go.

7 Q. Did they explain that conclusion at all?

8 A. No. Not that I recall.

9 Q. Where did the manager's meeting take place?

10 A. It was in Kohler, Wisconsin.

11 Q. In a hotel?

12 A. Yeah, it was a hotel conference facility. The  
13 American Club.

14 Q. How long was the conference?

15 A. I believe it was a few days, something like that.

16 Q. And what took place over those few days?

17 A. There was general business meetings about the  
18 company, individual one-on-one meetings, which I described  
19 to you just a minute ago, there was some golf that was  
20 played on one day.

21 Q. And how many people attended?

22 A. I'd say there was probably 15 to -- maybe 15, 20,  
23 at the max.

24 Q. So it was Power Medical executives from Langhorne  
25 and the regional managers?

1 A. Yes.

2 Q. Anybody else?

3 A. Pat Holmes -- well, he would be from Langhorne.  
4 I think that's it. I can't recall anybody else.

5 Q. Were there any discussions about the products  
6 during the two days?

7 A. There was discussions about products. Mostly  
8 future products.

9 Q. Any discussion regarding the existing products?

10 A. None that -- they may have been discussed, but no  
11 conversations jump out at me or presentations that were  
12 given.

13 Q. Did you have any discussions with other regional  
14 managers regarding product performance issues?

15 A. Not that I recall, no.

16 Q. Did anybody from quality assurance at Power  
17 Medical attend the meeting?

18 A. I don't believe so. Although I'm not positive on  
19 that, but I don't recall anybody from quality assurance.

20 Q. During your time at Power Medical, did you ever  
21 communicate with anybody at quality assurance for any  
22 reason?

23 A. I can't recall specifics. I'm sure I talked to  
24 people in that department before, so ... I believe the  
25 person that headed it up was Greg Jones, and I know I met

1 A. Not that I've been involved with.

2 Q. Have you heard of one occurring?

3 A. No.

4 Q. When Mr. Whitman instructed you to terminate  
5 Mr. Tantiado, do you recall what specifically he said?

6 MS. HUBER: Objection; mischaracterizes his  
7 testimony.

8 MR. HENRY: Let me back up.

9 Q. Did Mr. Whitman instruct you to terminate  
10 Mr. Tantiado?

11 A. Yes.

12 Q. What were his words, to the best of your  
13 recollection?

14 A. I don't recall the exact words, but basically it  
15 was, you know, he communicated that we needed to let him go  
16 and that we -- I believe it was to -- I don't recall if the  
17 plan was to rehire for that position or, you know, whether  
18 he said, "let him go and find somebody else for that  
19 position or" -- but basically that the direction was given  
20 to terminate his employment.

21 Q. Did you hire anybody for Mr. Tantiado's position?

22 A. I don't believe that I did, no.

23 Q. At that meeting, which Mr. Whitman directed that  
24 Mr. Tantiado be terminated, did he direct that you  
25 terminate anybody else?

1 A. There would have been a document put out each  
2 year that stipulated what the commissions were for the  
3 sales representatives. That's usually done during the  
4 first part of the year.

5 Q. Besides stating what the percentage was, did the  
6 document say anything else?

7 A. I think that usually it's -- I don't recall a  
8 specific document, but typically they are an overview of  
9 all the compensation that a sales representative would get,  
10 including base salary, company benefits, commission. Some  
11 years, it's a more elaborate document than others.

12 Q. Was there anything else describing the commission  
13 arrangement besides that document that you just described?

14 MS. HUBER: Objection; calls for speculation.

15 MR. HENRY: Q. To your knowledge.

16 A. No, not that I recall.

17 Q. At the time that you were managing Mr. Tantiado,  
18 did Power Medical have any policy with regard to the  
19 effective returns of product on a sales representative's  
20 commission?

21 A. Anything in writing, you say?

22 Q. Any policy.

23 A. I don't know that there was anything in writing.  
24 Typically, returns go against sales.

25 Q. And when you say "typically," how do you know



1 that?

2 A. Well, that's usually how it's done within the  
3 industry. I mean, it's kind of an industry norm.

4 Q. How is that conveyed to sales representatives of  
5 Power Medical when you were managing Mr. Tantiado?

6 A. I'm not sure if it was in the compensation  
7 booklet or not. I don't know that the issue -- I don't  
8 know that we directly discussed the issue. So if it was  
9 stipulated in a policy, it would be most likely in that  
10 sales compensation booklet that comes out at the beginning  
11 of the year.

12 Q. Do you have any specific recollection of a  
13 writing or a written policy stating that policy?

14 A. No, I can't recall if it was in the compensation  
15 communication or not.

16 Q. And did you ever inform Mr. Tantiado that there  
17 was a policy that returns would be counted against sales?

18 A. I don't recall having -- I don't recall  
19 specifically communicating that.

20 Q. How about to any other sales representative?

21 A. No.

22 Q. Since you resigned from Power Medical, have you  
23 had any discussions with anyone at Power Medical regarding  
24 Mr. Tantiado?

25 A. I had a conversation with Keith Mintun. I had

1           A.    Through -- I mean, the first thing you look at  
2 are sales results. So that's probably the primary gauge as  
3 to how somebody's doing.

4           Q.    About how many products was your sales team  
5 trying to sell during the time that Myrick Tantiado was a  
6 salesperson under your supervision?

7           A.    Well, there's different product lines. So there  
8 was really three product lines: straight linear cutters,  
9 right-angle linear cutters and circular staplers.

10          Q.    And under each line, about how many products were  
11 there?

12          A.    There's typically three or four products, you  
13 know, four products.

14          Q.    So would you say, in total, there is roughly 10  
15 to 12 products that were being sold at any given time?

16          A.    Yeah.

17          Q.    So how much of an impact does it have on your  
18 sales force if one particular product isn't selling well?

19          A.    You know, it can have an impact. I mean, if you  
20 don't sell one, then it can make it harder, but -- so I  
21 don't know how to answer that, other than if you were to  
22 take -- I suppose you could do it mathematically. I'd say  
23 it can have an impact.

24          Q.    Do you recall a Dr. Robert Khoo?

25          A.    Yes.

1 Probably -- might have been after.

2 Q. Do you recall the contents of the e-mail?

3 A. Contents of the e-mail would have been sales  
4 objectives potentially, you know, discussions around sales  
5 objectives, the need to sell a certain volume of products  
6 monthly.

7 Q. Do you recall what quarter that would be based  
8 on?

9 A. May have been the second quarter, could have been  
10 the third. I'm not sure.

11 Q. Did Mr. Tantiado respond to that e-mail?

12 A. I don't recall.

13 Q. Do you recall any other e-mails to Mr. Tantiado  
14 regarding performance-related issues?

15 A. Not during 2006.

16 Q. Do you recall any specific conversations with  
17 Mr. Tantiado between the date of the ASBS meeting and the  
18 date of your meeting in Wisconsin?

19 A. No.

20 Q. Do you recall the date of the ASBS meeting?

21 A. I want to say it was in the early part of May.

22 Q. Do you recall the date of the Wisconsin meeting?

23 A. July, maybe 6th, 7th and 8th, something like  
24 that, but I'm not positive on that date.

25 MR. HENRY: Okay. That's all I have. I am going